

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JERRY RAINS,	:	Case No. 1:16-cv-180
	:	
Petitioner,	:	Judge Timothy S. Black
	:	Magistrate Judge Karen L. Litkovitz
vs.	:	
	:	
WARDEN, CHILLICOTHE	:	
CORRECTIONAL INSTITUTION	:	
	:	
Respondent.	:	

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 22)**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Karen L. Litkovitz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on October 20, 2016, submitted a Report and Recommendation. (Doc. 22). Petitioner filed an objection to the Report and Recommendation on November 14, 2016. (Doc. 23).¹

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does

¹ After reviewing Petitioner's objections, the Report and Recommendation, and the state court record, the Court finds that Petitioner's objections are without merit. The Ohio Court of Appeals found Petitioner's ineffective assistance of counsel claims to be without merit, and this Court agrees with the Magistrate Judge's conclusion that the state court's ruling was neither contrary to clearly established federal law or based on an unreasonable determination of the facts. *See* 28 U.S.C. § 2254(d).

determine that such Report and Recommendations should be and is hereby adopted in its entirety. Accordingly, **IT IS ORDERED** that:

- 1) Respondent's motion to dismiss (Doc. 8) is **GRANTED**;
- 2) Petitioner's petition for a writ of habeas corpus (Doc. 1) is **DISMISSED WITH PREJUDICE**. The Clerk shall enter Judgment accordingly, whereupon this case shall be **TERMINATED** in this Court.
- 3) A certificate of appealability shall not issue with respect to any of the grounds for relief alleged in the petition because petitioner has not stated a "viable claim of the denial of a constitutional right," nor are the issues presented "adequate to deserve encouragement to proceed further." *See Slack v. McDaniel*, 529 U.S. 473, 475 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)); *see also* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).
- 4) The Court certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal of this Order would not be taken in good faith and therefore Plaintiff is denied leave to appeal *in forma pauperis*.

IT IS SO ORDERED.

Date: 11/16/16

s/ Timothy S. Black
Timothy S. Black
United States District Judge